

**Sept 2, 2023**

**Dear Orinda City Council Members,**

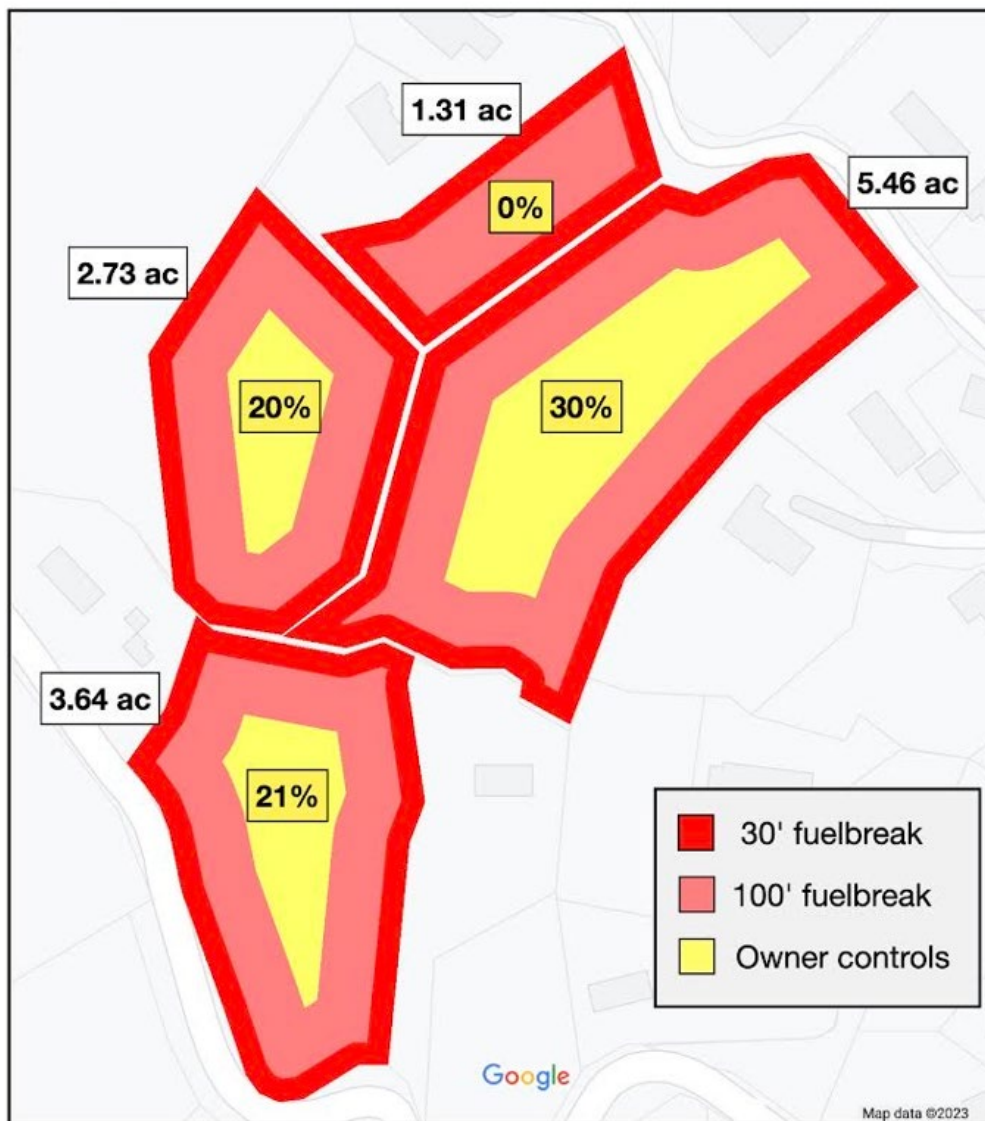
**My family has several vacant parcels on Miner Road in Orinda. We have been caring for this property for over 60 years now. It is not overgrown; much of it is open and park-like. We love the beautiful landscape and the wildlife, which are much enjoyed by our neighbors.**

**Last February, MOFD increased the width of the fuelbreak required around the PERIMETER of our lots, from 30 feet to 100 feet, more than triple. According to tape recordings from this meeting, the change was made to simplify regulations, and make the rules for parcels in the 1 – 5 acre range the same as for 10 acres plus.**

**This change, which was not in response to new fire science, has a devastating effect on parcels like ours. The map below shows how much of the remaining property is now under our own control – less than 30% of a parcel as big as 4 or 5 acres. MOFD has appointed itself the new managers, although we have to pay the bills for their decisions. These bills amount to many thousands of dollars annually, and far exceed what we pay in property taxes.**

**PLEASE SEE NEXT PAGE**

## VACANT LOTS



Yes, we could ask MOFD for permission to treat our lots as a single parcel and make one 100' fuelbreak around the whole. But this doesn't help our neighbors who are struggling with the same problem – 100 feet is just too wide a fuelbreak. And actually, it is 200 feet because the next door owner has to do the same amount. There are over 500 parcels in Moraga-Orinda that are affected by this change, and over 1000 acres of additional clearing will be required.

In fairness, I should point out that this map is not entirely accurate because it applies only to VACANT parcels. If there was a house in the middle of the property, it would ALSO require a 100 foot fuelbreak around it, so that the ENTIRE parcel would be subject to MOFD regulation. Yes, a parcel as large as 5 acres or more would be subject to management entirely outside the owner's control.

**My family objects strenuously to this regulation, not only for the impact on native plants and animals, but also due to the taking of our property rights and the expense it imposes on us every year going forward. We were never consulted nor advised of this change, and learned of it only upon receiving a 30-Day Pre-Citation in the mail last May.**

**I hope that the City Council can exert some influence on MOFD to reconsider this ordinance. We can't fuelbreak all of Orinda. There are other more effective ways to protect our lives and homes, like safe evacuation routes, community alarm systems, and home hardening. We don't have to eliminate nature to be fire safe.**

**Sincerely,**

**Sandy Pearson**



Sept 2, 2023

Dear Orinda Council Members,

I would like to offer my comments on the Proposed Ordinance 2308 being considered at Tuesday night's Council Meeting. My background is in natural history, and native plants and animals are my interest, so I can offer a different perspective on the proposals at hand.

My main observation: this document offers some improvements over the previous ordinances, but is still most remarkable for what is missing. MOFD continues to deny the effects of their requirements, instead of collaborating to find better ways to accomplish their worthy goals.

Here are my comments, which I hope will explain my statement. They are organized by topic.

#### VEGETATION MANAGEMENT - BUSHES

One of the improvements in this proposed Ordinance is a paragraph explaining that properly spaced shrubs can indeed be left in the fuelbreak area. I believe this standard was used before, but it was not described anywhere that residents were likely to find it. The Ordinance now describes the horizontal spacing that is considered fire-safe.

What is still missing here is the vertical spacing which is required when bushes are growing under trees. An air gap is required, something like 2 ½ times the shrub height, so that they don't carry fire to trees growing above. Where is this information to be found?

Bushes are crucially important for all our ground nesting birds, including California quail. They should be preserved wherever it is safe. Many people are planting drought-tolerant native plants, which provide food for native wildlife. Since these are mostly unirrigated, and unirrigated brush is declared to be Hazardous, it is not clear whether gardeners would be obliged to remove the very bushes they have planted.

#### GROUND COVER

There is also still no direction about green groundcovers, including things like native ferns and Yerba Buena. Since they are low growing and green all year, these plants seem to be vastly better than dry annual grasses, and might even be useful in catching drifting embers that would otherwise lodge against houses. Some properties in our neighborhood have had their clearing approved and have left both ferns and monkey flower. It is not at all clear if land must be cleared to bare dirt, or 3 inches, or if certain low green plants can remain. These standards need to be available so that the same rules can be applied to everyone.

Leaving some low green vegetation is also the only way to provide shelter for brush rabbits and quail. These animals are such sought after snacks, it is hard for them to safely cross large

denuded areas. Baby quail are especially vulnerable. Extensive swaths of bare land eliminates them from the area.

## TREES

This Ordinance preserves mature trees, as did the last version, but more explicitly here. The bottom branches up to 6 feet must still be removed. What is not explained is that young trees can remain, and that the bottom branches should be removed up to 1/3 the height of the small tree. Eventually the tree will be big enough that the clearance will also grow to 6 feet. This is good news, but where is this information?

## DEAD TREES and LOGS

Large dead trees and down woody debris are some of the most valuable wildlife habitat in the landscape, and its removal is a severe blow to animals. Because we are talking about old, long dead trees, they do not have the twigs and other fine fuels that spread fire quickly. They are hard to light and tend to smolder for a long time after the fire front has passed, so they are one of the least hazardous fuels out there.

Large dead trees, called snags, are pretty rare – especially those over 18 inches which are most useful to hawks, owls, and all the cavity nesting birds that seek out the hollows where branches have fallen off with age. Considering the cost vs. benefit and overall scarcity, snags deserve special consideration. They are not mentioned in this or any other ordinance.

Another very important wildlife resource is the granary trees use by colonies of acorn woodpeckers. You may have noticed old trees or telephone poles stuffed full of acorns. This is the winter food supply for a group of up to 20 native acorn woodpeckers, who spend months stocking their larder. These woodpeckers nest in a group in large hollow trees and have a fascinating social structure, with aunts and uncles helping to raise the chicks produced by the dominant pair. They could thrive in our oak woodland if we would take reasonable steps to assure their food stores and shelter.

Down woody debris and logs on the ground are another extremely valuable feature in the landscape, a haven for lizards, salamanders, field mice, beetles, and many other creatures. They conserve moisture in the soil, prevent the soil from drying, and provide a substrate for interesting mushrooms, which support their own animal kingdom. They will burn, but without twigs and fine fuels, they do not burn rapidly. They eventually become mulch and enrich the soil. We need to consider their great value to the environment against their modest contribution to fire risk. They are not so different from the piles of wood chips remaining all around after clearing operations.

## GRASS

The dry annual grasses that cover our hillsides are invasives; they have replaced the native perennial bunch grasses that once covered California. The natives grow year after year, some living for decades. They put long roots deep into the soil, holding steep hillsides in place. And they allow rainfall to infiltrate into the soil preventing excess run-off that leads to flooding.

There is a wonderful exhibit at the Oakland Museum showing a California Oat grass bunch removed intact from the soil, with a thick tangle of roots dangling 6 feet below it.

There are a few areas that still have native perennial bunch grass around – they thrive when mowed to 3 inches, as required. The mowing or weedeating also helps them spread into areas dominated by the invasive annuals. Fire fighters recognize that they carry fire much less rapidly than the annual grasses, since they stay a bit moist all thru the year. We need to be sure we conserve the perennials where they occur, and avoid damaging them, which would surely lead to their replacement by the far more flammable annuals.

The regulations call for grasses to be cut to 3 inches; in practice, most areas that are weedeaten are cut closer to zero. Some contractors are proud to offer treatments which involve triple cutting the grass stems, and result intentionally in hillsides that look like they have been raked. This is not only unnecessary, according to past and present Ordinance requirements, but exposing the soil to the baking sun makes it hard and less able to absorb water the following winter. This makes it harder for small herbaceous plants to get started the next spring and gradually renders the area less able to support life.

Weedeating has consequences; it is not harmless, though it may be necessary. A field that is weedeaten no longer supports field mice which are the principal food for hawks, owls, foxes, coyotes, and bobcats, all our largest and most interesting animals. It cannot be true that the vast amount of weedeating going on now has no environmental consequences. We need to acknowledge our impacts, and plan how to minimize or mitigate them.

Here are some more general comments and questions related to the Ordinance:

1. The Moraga Orinda Fire District is creating the Tunnel Shaded Fuel Break using the somewhat more nature-friendly standards adopted by CalFire, the State Board of Forestry and Fire Protection. They are applied on EBMUD and the East Bay Regional Park District lands. Why can't we apply them to our private property as well?
2. Repeated disturbance of native vegetation can lead to its replacement by more flammable annual grasses and other invasive weeds, making the fire hazard WORSE. All plants are not created equal when it comes to fire. We can be more selective and just as effective.
3. Fuelbreaks are not the most effective way of reducing fire risk. Creating safe evacuation routes, developing community alert systems, and the hardening of homes and other structures to resist fire are all important strategies to save lives and property. Fuelbreaks are simply far less controversial than telling homeowners their wood fence or deck skirting is a problem.

The Fire District has gotten a bulk shipment of gutter guard – I look forward to getting some for my own home, and seeing more emphasis on protecting structures directly.

4. At least 4 of my immediate neighbors have spent over \$10,000 this year on vegetation clearing. It's true that much of it was overdue and needed to be done. But annual expenses will

continue. The grass will grow back, possibly thicker where the brush was removed. And the brush will keep trying to come back for many years, for better or worse. This continuing expense is like a tax suddenly imposed on people with larger yards, most of which are quite steep and difficult to treat. The benefits are spread to the neighborhood in reduced fire risk, but the cost is borne by the individual.

5. The proposed Ordinance expands on the availability of Modifications to the requirements, and is a welcome addition. However, they are not the complete answer to addressing environmental concerns. Modifications may not lessen the fire safety requirements, and must provide the Same Practical Effect as the original requirements. It is hard to imagine what trade-offs would be acceptable, other than perhaps relocating a fuelbreak.

This section of the Ordinance also suggests that homeowners may submit an individualized fire protection plan. This may be something useful, but all detail is deferred to the State Fire Code. Still, this could be a step in the right direction and is a welcome development.

6. One of the biggest problems with the vegetation management program is the difficulty of finding out what is really required. In the neighborhoods, you can see wildly different treatments which have all been approved. Owners who are pressured to respond within 30 days don't have time for a research project. They may order something more severe than they would like because they just don't know. Many decisions are being left to the contractors, who also lack information.

The Fire District's Pre-Citation notice warns owners against the "taking of endangered, rare or threatened plant or animals species" or causing "significant erosion and sedimentation of surface waters". But there is zero guidance on what that means or how to accomplish it. What ARE the rare and threatened species? How do we avoid taking them? How much erosion is significant? How are we supposed to find out? And still meet the 30-day deadline?

There is clearly a lot of guidance missing, but the Ordinance is probably not the best place to put it. And if the Best Practices evolve, the Ordinance would have to be amended. Perhaps there is a way to tie the Ordinance to a document outlining the specific requirements, hopefully produced by a collaboration of fire officials, biologists, and other citizens. Marin County has produced an excellent example in their Ecologically Sound Practices for Reducing Wildfire Risk.

7. The final paragraphs of the proposed Ordinance is particularly troubling to me. It says:

"These requirements will be beneficial to the environment by preventing the emergence and spread of wildfires, which can cause immense environmental harm. Further, the Ordinance contains provisions requiring it to be interpreted and implemented in a manner that avoids environmental impacts, and directs property owners to seek modifications of the applicable requirements if compliance would cause any such impacts. Due to these requirements, there is no possibility that it will cause significant environmental effects."

Our Fire District is focused on protecting our community and environment from wildfire. Of course we all support that. But their continuing denial that there is ANY impact on the natural world from the large scale disturbance of vegetation makes it impossible to find ways to mitigate it.

And the insistence that ordinary homeowners can make appropriate decisions on complex environmental issues in the complete absence of any information is ridiculous.

For the district to try to shed all responsibility for the decisions that get made this way is an affront to common sense. It's as if I left a 6 year old child alone in the kitchen with orders to have dinner on the table by the time I come home or else suffer the consequences. Oh, and you have to buy the groceries yourself!

**Requiring** provisions to be interpreted and implemented correctly is senseless. It seems like an embarrassingly transparent ruse to avoid responsibility and duck the requirements of California's environmental regulations.

I'm sorry to be so blunt, and I understand this is the best advice of the District's Counsel, but our community is increasingly losing its native plants and wildlife and facing a dramatic increase in erosion, run-off, and landslide and we are not even beginning to deal with our problems due directly to this charade.

It's time to start working together to protect our environment, both the built and the natural.

Thank you, City Council, for providing a forum where citizens can finally share their concerns. I hope some helpful discussions and partnerships can emerge from this process.

Sincerely,

Sandy Pearson



JESSICA L. BLOME  
2748 Adeline Street, Suite A  
Berkeley, CA 94703  
Phone: (510) 900-9502  
Email: [jblome@greenfirelaw.com](mailto:jblome@greenfirelaw.com)  
[www.greenfirelaw.com](http://www.greenfirelaw.com)

September 18, 2023

*By email only*

Moraga-Orinda Fire District  
Fire Chief Dave Winnacker  
President John Jex  
1280 Moraga Way  
Morago, CA 94556  
Email: [info@mofd.org](mailto:info@mofd.org),  
[Dwinnacker@mofd.org](mailto:Dwinnacker@mofd.org),  
[mmjjex@gmail.com](mailto:mmjjex@gmail.com)

**RE: Public Comments on Amended Fuel Break Ordinance No. 23-08, Agenda Item 9.1 for the September 20, 2023, regular meeting of the Moraga-Orinda Fire District Board of Directors**

Dear MOFD Board of Directors and Fire Chief:

I am writing on behalf of Orinda residents, Sandy Pearson and Anita K. Pearson, to submit public comments regarding the proposed Amended Fuel Break Ordinance 23-08 (“Amended Ordinance”). These comments supplement the comments submitted by Sandy Pearson, including those relayed to MOFD by the City of Orinda on September 6, 2023. This letter also incorporates comments raised in our letter of August 2, 2023 (“Notice Letter”), which were directed at Fuel Break Ordinance, No. 23-04 but remain applicable to the Amended Ordinance. (**Exhibit A, Notice Letter**).

First, we would like to acknowledge the importance of preventive actions to reduce the risk of catastrophic wildfires in our communities. We appreciate your efforts to advance this objective and thank you for your willingness to make revisions to the Fuel Break Ordinance to address compliance with the California Environmental Quality Act (CEQA) and respond to community concerns. At the same time, however, we remain concerned that the Amended Ordinance, like its predecessor, not only fails to examine the potentially significant environmental impacts of the proposed fuel breaks, but denies the possibility that such impacts exist. (Ord. 23-08 § 9.) Ultimately, the Amended Ordinance fails to address the key issues raised in our previous letter.

**The Amendments Fail to Address Environmental Concerns.**

The Amended Ordinance substantially maintains the scope and applicability of the previous ordinance’s Fuel Break Requirements (*Id.*, § 4(c).) While the amended language

eliminates a loophole for perennial grasses and makes allowances for shrubs and small trees, the requirement that each landowner, lessee, or property manager must create and maintain 100-foot wide fuel breaks around the entire perimeter of their properties remains unchanged. (*Id.*, § 4(a) and (c).) Again, the potential environmental impacts of these actions were not evaluated and our previous comments addressing the potentially significant impacts on biological resources, slope stability, and water quality remain applicable. (*See Exhibit A*, at pp. 2-3, 4-5.)

The scope of applicability for the Amended Ordinance also appears similar to the suspended Ordinance 23-04, although this has been reformulated to reference the state list of “Communities at Risk,” which has included Orinda and Moraga since 2001. Under the Amended Ordinance, the “Affected Parcels” includes all parcels within or adjacent to Orinda and Moraga, or adjacent to any other Community at Risk bordering the District, and all parcels within the unincorporated areas of the District that have at least one “habitable structure” or are adjacent to a parcel with a habitable structure. While “habitable structure” is not defined, this appears to include nearly every parcel within the District.<sup>1</sup> As with the previous ordinance, there is no estimate of the number of parcels or acreage affected, and no map provided to indicate what areas, if any, are excluded.

Also like the suspended Ordinance 23-04, the Amended Ordinance provides no explanation for the decision to increase the size of mandatory fuel breaks for parcels under 10 acres from 30 feet, as required in 2022 (*See* repealed Ord. 22-02), to 100 feet in 2023. As noted in our previous letter, this change appears to be completely arbitrary. (*See Exhibit A*, at p. 5.) There is no evidence that the increase was necessary because 30 foot fuel breaks were found to be inadequate, or that conditions changed so dramatically in the past year as to warrant more than tripling their size. When asked about this in public meetings, the Fire Chief has stated only that the change was intended to simplify the requirement and reduce confusion by making it uniform for all parcels.<sup>2</sup> However, there is no evidence of widespread confusion. If anything, the expanded requirement has created confusion by suddenly increasing the size without explanation, and thereby increasing the burden on local residents and cost of compliance, as well as the impacts on the environment. Given that abutting parcels must both have fuel breaks in most cases, this is actually an increase from 60 feet to 200 feet. For comparison, the width of a football field is only 160 feet. The need for such immense clearings around every property line has not been established. In fact, the Fire Chief stated in a recent Guest Column for a national trade journal that many fuel breaks are ineffective when they are remote from roadways, lacking vehicular access for firefighters, or not strategically placed along ridgetops, and “yet we keep putting in shaded fuel breaks without any validation that they will work.” (**Exhibit B, Daily Dispatch Guest Column**, “We Can Do It Better” by MOFD Fire Chief Dave Winnacker (Aug. 7, 2023), <https://www.dailydispatch.com/Columns/GuestColumn.aspx>.)

The Amended Ordinance’s new language highlighting the availability of Modifications is unlikely to effectively protect sensitive natural resources or significantly reduce potential environmental impacts to more than a few parcels. (Ord. 23-08 § 5.) As discussed at the Orinda City Council Meeting on September 5, 2023, many residents and landowners are unaware whether

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<sup>1</sup> As with the previous ordinance there is no estimate of the number of parcels or acreage affected, and no map to indicate what areas, if any are excluded.

<sup>2</sup> See e.g., Audio Recording of MOFD Board of Directors Special Meeting (Sept. 6, 2023).

sensitive biological resources even exist on their property and would see no need to request a modification.<sup>3</sup> While the Ordinance boldly asserts that individual landowners, lessees, or managers of parcels with sensitive or protected resources “shall request a modification,” there is no information provided to assist these persons, or Fire District Officials, in determining which lands fall into this category. (*Id.*, § 4(d).) In addition, each person requesting modifications must provide documentation prepared by a certified biologist or geologist, which could cost thousands of dollars in each instance, which is both inefficient and likely to deter many residents from pursuing this option. There is also no guarantee that a modification request will be approved, even after going to the trouble and expense of hiring certified experts, as the Fire Chief or his designee may find modification inadequate. (*Id.*, § 5(a).) Thus, although the modification provisions purport to address environmental concerns, this approach delegates the burden of environmental compliance to the individuals served by the District. Ultimately, it would far more efficient and effective for the District to conduct a single survey of impacted resources at the District level, and to make this information available to members of the public to facilitate compliance, as well as enforcement and accountability.

Again, like the suspended Ordinance 23-04, there is no analysis of the potentially significant impacts of the Fuel Break Requirements. While the Amended Ordinance repeatedly notes that fire prevention will help prevent adverse impacts associated with catastrophic wildfires, it fails to acknowledge that the actions required by the ordinance will also have significant impact. As explained in our additional comments, the potential impacts to natural resources include the destruction of wildlife habitat and native plant communities, disruption of wildlife and protected species, increased soil erosion, increased risk of landslides, and impairment of water quality. (*See e.g.*, Notice Letter at 2-3, 4-5.) This could significantly impair the biodiversity, ecology, and hydrology of these areas. Fuel break construction may also spread invasive species,<sup>4</sup> and pathogens such as sudden oak death,<sup>5</sup> generate significant noise pollution, and impair the aesthetic enjoyment of the natural landscape. None of these potential impacts have been properly evaluated.<sup>6</sup>

The Orinda-Moraga area is home to an abundance of native wildlife and sensitive natural plant communities. As noted in the Orinda general plan:

Information from the Natural Diversity Data Base of the California Department of Fish and Game shows that several rare or endangered species have been located in or near the Orinda Planning Area. State and federal law protects rare, threatened and endangered animal species by preserving habitats.

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<sup>3</sup> A recording of the Sept. 5, 2023, Orinda City Council meeting is available here:

<https://orindaca.iqm2.com/Citizens/Board/1000-City-Council#>.

<sup>4</sup> *See e.g.*, California Invasive Plant Council, “IPCW Plant Report: Cytisus scoparius” (Scotch broom), <https://www.cal-ipc.org/resources/library/publications/ipcw/report39/> (last visited Sept. 14, 2023).

<sup>5</sup> *See e.g.*, California Oak Mortality Task Force. Sudden Oak Death Guidelines for California Landscapers & Gardeners (July 2021), <https://www.suddenoakdeath.org/diagnosis-and-management/best-management-practices/>.

<sup>6</sup> Public comments on the Amended Ordinance, including those submitted through the City of Orinda, further describe the potential for widespread clearing of vegetation to adversely impact rare and sensitive native plants and wildlife; *see e.g.*, Letters from California Native Plant Society East Bay Chapter, Friends of Orinda Creeks, John Muir Land Trust Custodian Tyler Rust, and Plant Ecologist Barbara Leitner. (Public Comments, MOFD Special Meeting (Sept. 6, 2023), <https://www.mofd.org/transparency/resources/board-agendas-minutes>.)

(Orinda General Plan, at 4-1.<sup>7</sup>) Endangered species known to occur within the Orinda-Moraga area include California red-legged frog,<sup>8</sup> Alameda whipsnake,<sup>9</sup> and pallid manzanita.<sup>10</sup> Many other rare and sensitive species are also known to inhabit the area.

Notably, the Endangered Species Act (ESA) prohibits the unauthorized “take” of endangered species, which includes actions that kill, harass, or harm such species. (16 U.S.C. §§ 1538 (B), 1532 (19)). As defined by the Act’s implementing regulations, “harm” includes “significant habitat modification or degradation” that “kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” (50 CFR § 17.3). Here, the removal of vegetation to create football-field-sized fuel breaks along property lines throughout the District would likely entail significant habitat modification that could easily disrupt the normal behavior of protected species through the elimination of food plants, food plants of prey species, denning and mating sites, and cover.<sup>11</sup>

Potential impacts of massive fuel breaks on soil erosion and slope stability are also significant. The Contra Costa County General Plan notes that there are multiple landslide deposits within the Orinda-Moraga area, and finds that “the presence or absence of deep-rooted vegetation . . . can exert a controlling effect on the intensity of natural processes occurring on a particular hillside.” (Safety Element, at p. 10-22).<sup>12</sup> While the Amended Ordinance acknowledges that the area is hilly and subject to landslides, which can impact evacuation routes and firefighting response times, it does not evaluate the potential for large scale vegetation removal to exacerbate this issue. (Ord. 23-08 §§ 2(k)(iii)(A) and (B).) In contrast, public comments on the Ordinance raise concerns that compliance with the ordinance could trigger mudslides and threaten homes, and reported that some fuel breaks have removed grasses and vegetation all the way down to the soil, even on steep slopes and within riparian areas.<sup>13</sup> This excessive clearing exposes bare soil, which increases soil erosion, and may also kill some plants, thereby decreasing the soil stability provided by healthy root systems.<sup>14</sup> Such factors increase the risk that soils will begin to slide, especially on steep slopes, which could threaten homes or impact evacuation routes.<sup>15</sup>

Similarly, excessive clearing in riparian zones can destabilize streambanks and increase water pollution by eliminating the vegetative buffer and allowing sediments from runoff to flow

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<sup>7</sup> See City of Orinda General Plan, Conservation Element, <https://cityoforinda.app.box.com/s/zb07kq9r9eiafrwu6i9w>.

<sup>8</sup> U.S. Fish and Wildlife Service, “California Red-Legged Frog,” <https://www.fws.gov/species/california-red-legged-frog-rana-draytonii> (last visited September 14, 2023).

<sup>9</sup> U.S. Fish and Wildlife Service, “Alameda Whipsnake,” <https://www.fws.gov/species/alameda-whipsnake-masticophis-lateralis-euryxanthus> (last visited September 14, 2023).

<sup>10</sup> California Dept. of Fish and Wildlife, “Pallid Manzanita,” <https://wildlife.ca.gov/Conservation/Plants/Endangered/Arctostaphylos-pallida> (last visited September 14, 2023).

<sup>11</sup> See e.g., Miguel Lurgi, *Habitat loss doesn’t just affect species, it impacts networks of ecological relationships*, The Conversation (May 30, 2019), <https://theconversation.com/habitat-loss-doesnt-just-affect-species-it-impacts-networks-of-ecological-relationships-117687>.

<sup>12</sup> See Contra Costa County General Plan, Safety Element, at pp. 10-24, 10-25.

<sup>13</sup> See e.g., Comment Letters from Friends of Orinda Creeks and Julia Hunting. (Public Comments, MOFD Special Meeting (Sept. 6, 2023), <https://www.mofd.org/transparency/resources/board-agendas-minutes>.)

<sup>14</sup> *Id.*, at p. 10-22.

<sup>15</sup> See e.g., Comment Letters from Friends of Orinda Creeks and Julia Hunting. (Public Comments, MOFD Special Meeting (Sept. 6, 2023), <https://www.mofd.org/transparency/resources/board-agendas-minutes>.)

directly into creeks.<sup>16</sup> Increased sediment loads could degrade aquatic habitat, harm fish by increasing siltation of stream beds required for spawning, and contribute to the clogging and sedimentation of human constructed waterworks.<sup>17</sup> In sum, these potential impacts merit careful evaluation and point to the need for additional guidance to prevent serious resource damage and minimize the risk of landslides.

### **The Proposed CEQA Exemptions Are Inapplicable.**

Notwithstanding the potentially significant impacts outlined above, and in other comment letters, the District asserts that the Amended Ordinance will have “no significant or potentially significant negative environmental impacts” and adds a new language claiming multiple exemptions from compliance with CEQA. (Ord. 23-08 § 9.) In particular, the new ordinance claims categorical exemptions under CEQA Guidelines section 15307 and 15308, the statutory exemption designed for emergencies, and the common sense exemption. (*Id.*)

First, as to the categorical exemptions, we addressed these in our Notice Letter concerning Ordinance 23-04, and incorporate the same comments here. (Exh. A, at pp. 4-5.) The Amended Fuel Break Ordinance does not qualify for the Class 7 or Class 8 exemptions because these apply only to actions that maintain, restore, enhance, or protect natural resources and the environment. (*See* CEQA Guidelines, §§ 15307, 15308.) Where the proposed action seeks to protect some natural resources by eliminating protections for others, courts have found these exemptions inapplicable. (*See Save Our Big Trees v. City of Santa Cruz* (2105) 241 Cal.App.4th 694, 712). Here, the requirement for residents to remove natural vegetation from large tracts of land throughout the District will disrupt natural resources and sensitive species with no mitigation measures to minimize harm or ensure their protection. Simply declaring that other parties will “interpret” the Ordinance in a manner that avoids all impacts does nothing to ensure that they will do so.

There is also no rational analysis to support the assertion that: “[n]o exception identified in CEQA Guideline Section 15300.2 applies to this Ordinance.” (Ord. 23-08 § 9(a); 14 C.C.R. § 15300.2.) In fact, the mandate requiring major habitat modifications to be undertaken by hundreds of different landowners with no guidance or mitigation measures in place to prevent potentially significant adverse impacts could have very significant cumulative effects on natural resources. Additional fuel clearing activities on lands within and surrounding the district could also have cumulative effects on wildlife and plant communities whose range overlaps with other projects (e.g., defensible space clearings) and other jurisdictions. The existence of protected species, slide areas, nature preserves, and critical watershed lands within and around the District may also justify application of the location exception. In addition, existing stress on natural resources due to climate change, the recent extended drought, and habitat fragmentation may constitute unusual circumstances. Failure to analyze these existing conditions does not render them inapplicable.

Second, as to the commonsense exemption, the mere recitation of the phrase, “it can be seen with certainty that there is no possibility that the activity in question may have a significant

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<sup>16</sup> *See e.g., California Riparian Habitat Restoration Handbook*, 2nd ed. (July 2009), <https://coveredactions.delta.council.ca.gov/services/download.ashx?u=a3689597-31c2-4140-adb0-9200fa71c0e0>.

<sup>17</sup> *See e.g.,* USDA Natural Resources Conservation Service, Water Quality Degradation: Sediment (March 2012), [https://efotg.sc.egov.usda.gov/references/public/AR/Water\\_Quality\\_Degradation\\_Sediment.pdf](https://efotg.sc.egov.usda.gov/references/public/AR/Water_Quality_Degradation_Sediment.pdf).

effect on the environment” does not make it so. (Ord. 23-08 § 9(c); 14 C.C.R. § 15601(b)(3).) As discussed in this letter, and in other comments, there are many reasons to support the finding that the Fuel Break Ordinance may have a significant effect on the environment. The possibility that the Amended Ordinance will benefit some natural resources by reducing the impacts of future wildfires does not imply that the potentially significant adverse impacts of clearing massive fuel breaks can be ignored or disregarded.

Third, as to the emergency exemption, this applies only to “[s]pecific actions necessary to prevent or mitigate an emergency.” (Pub. Resources Code § 21080(b)(4); 14 C.C.R. § 15269.) Here, there is no evidence to support the finding that requiring fire breaks of this magnitude, placed non-selectively around every inhabited parcel within the are *necessary* to prevent an emergency. Pursuant to CEQA,

“Emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. “Emergency” includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

(Pub. Resources Code § 21060.3.) While there is no question that specific actions to prevent the “immanent” risk of a wildfire emergency, and “demanding immediate action” would fall within this definition, this does not mean every action to prevent wildfires qualifies for this exemption. Notably, here, there is no established evidence that the proposed action would even be effective in preventing a fire emergency. (*See* Exh. B, at p. 3 (“Critically, there does not appear to be a body of evidence supporting the efficacy of fuel breaks, shaded or otherwise.”).)

Courts tasked with reviewing the applicability of this exemption agree that unless substantial evidence “support[s] each element of the definition of an emergency,” this exemption is inapplicable. (*CalBeach Advocates v. City of Solana Beach* (2002), 103 Cal.App.4th 529, 536; *Western Mun. Water Dist. v. Superior Court* (1986) 187 Cal.App.3d 1104, 1113.). In *CalBeach Advocates*, where an eroding bluff posed an immediate threat to homes located above the bluff, the court found that this standard was met but clarified that a preventative action need not be *unexpected*. (*CalBeach Advocates, supra*, 103 Cal.App.4th pp. 537-38.) However, in *Western Mun. Water Dist.*, where an agency claimed that dewatering wells were necessary to mitigate the risk of liquefaction during an earthquake emergency, the court found “no substantial evidence that liquefaction was an imminent threat or that it demand[ed] immediate action.” (*Western Mun. Water Dist., supra*, 187 Cal.App.3d, at pp. 1113.) Courts have also rejected the applicability of the emergency exemption where the proposed action exceeded what was necessary to respond to an emergency, or the alleged emergency reflected a political choice to delay taking appropriate action. (*See Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257 (finding City’s redevelopment plan to recover from earthquake exceeded scope of action “necessary to prevent or mitigate an emergency”); *Los Osos Valley Associates v. City of San Luis Obispo* (1994) 30 Cal.App.4th 1670 (finding City project to drill new wells did not warrant emergency exemption because City was aware of drought and failed to conserve water for years.).

In addition, application of the emergency exemption must be narrowly construed to remain consistent with CEQA's broad mandate for the protection of the environment. (*Western Mun. Water Dist.*, *supra*, 187 Cal.App.3d, at pp. 1111-12.) Otherwise,

in the name of "emergency" it would create a hole in CEQA of fathomless depth and spectacular breadth. Indeed, it is difficult to imagine a large-scale public works project, such as an extensive deforestation project or a new freeway, which could not qualify for emergency exemption from an EIR on the grounds that it might ultimately mitigate the harms attendant on a major natural disaster.

(*Id.*) At the same time,

if a project arises for which the lead agency simply cannot complete the requisite paperwork within the time constraints of CEQA, then pursuing the project without complying with the EIR requirement is justifiable. For example, if a dam is ready to burst or a fire is raging out of control and human life is threatened as a result of delaying a project decision, application of the emergency exemption would be proper.

(*Id.* (citation omitted).) No dam is threatening to burst right now, metaphorically, or literally.

Indeed, the Amended Ordinance itself demonstrates that it is born of general statewide conditions, statutes, and directives, rather than the *specific emergency conditions* mandated by CEQA to justify invocation of an exemption from environmental review for an *imminent* emergency. (Ord. 23-08 § 2.) The Amended Ordinance discusses generalized fire behavior and conditions within the District, as well as five historic fires between 1923 and 2019, one of which, in 1988, destroyed five homes within the district. (*Id.*) However, there is no substantial evidence that fuel breaks of such extreme size and scope are *necessary* to prevent an *imminent* emergency. As discussed above, a similar ordinance that was in place just last year held that, for parcels under 10 acres, much smaller fuel breaks were adequate to achieve the same objective. (*See* Ord. 22-02.) The decision to enlarge the fuel breaks was not based on fire science or changed conditions that dramatically increased the risk of an imminent emergency, but reflected the Fire Chief's belief that a more uniform requirement would be less confusing for the general public. There is no substantial evidence to support the need for 100 foot fuel breaks instead of 30 foot fuel breaks. While action to reduce fuel loads should remain an ongoing priority, the actions here at issue should not be construed as an emergency as a means to circumvent CEQA's mandate to assess and mitigate potentially significant environmental impacts.

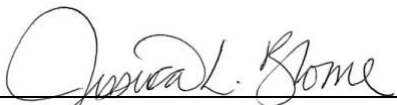
There can be no doubt that undergoing a CEQA process would allow the District to engage the local community to help develop reasonable standards that balance the need for fire prevention with local values and policies established to preserve natural resources. To the extent that delayed implementation of fuel breaks is a concern, the Fire District could set aside the current and Amended Ordinances and reinstate a more moderate requirement for the interim.

In conclusion, we do not object to reasonable fire prevention measures, including the use of appropriately sized and strategically placed fuel breaks to reduce fire danger. However, the Amended Ordinance imposes an extreme approach that is not supported by substantial evidence.

The requirement to create fuel breaks more than three times the size of those required just last year, in areas that are remote from structures and not strategically located, places an unreasonable burden on local residents, including the Pearsons. Because the current and Amended Ordinance, may cause significant and irreversible harm to natural resources, an environmental review is necessary to evaluate potential impacts, alternatives, and appropriate mitigation measures.

Thank you for the opportunity to comment on this important issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jessica L. Blome", is written over a horizontal line.

Jessica L. Blome  
Susann Bradford  
Greenfire Law, PC

## EXHIBIT A



JESSICA L. BLOME  
2748 Adeline Street, Suite A  
Berkeley, CA 94703  
Phone: (510) 900-9502  
Email: [jblome@greenfirelaw.com](mailto:jblome@greenfirelaw.com)  
[www.greenfirelaw.com](http://www.greenfirelaw.com)

August 2, 2023

*By email only*

Fire Chief Dave Winnacker  
[Dwinnacker@mofd.org](mailto:Dwinnacker@mofd.org)  
President John Jex  
[mmjjex@gmail.com](mailto:mmjjex@gmail.com)  
Moraga-Orinda Fire District  
1280 Moraga Way  
Moraga, CA 94556

**RE: Demand for Compliance with the California Environmental Quality Act**  
*Fuel Break Ordinance No. 23-04*

Dear President Jex and Fire Chief Winnacker:

I am writing on behalf of Orinda resident, Anita K. Pearson, who on June 7, 2023, was served with a "Pre-Citation Notification" demanding that she comply with Moraga-Orinda Fire District Ordinance No. 23-04 ("Fuel Break Ordinance" or "Ordinance") by creating a 100-foot fuel break around the entire perimeter of her family's 9.5 acre property located at 629 Miner Road in Orinda.

The Pre-Citation Notification listed the requirements of Fuel Break Ordinance, which directs that all owners, lessees, or persons controlling parcels greater than one acre must create and maintain a fuel break that complies with the following criteria:

- (A) Annual grasses cut to less than 3".
- (B) Removal of all Hazardous Vegetation.
- (C) Removal of non-irrigated brush.
- (D) Removal of all Combustible Material.
- (E) Removal of dead, diseased, or dying trees.
- (F) Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 6 feet above the ground.

(MOFD Notification, June 7, 2023.) The Notification then goes on to state that:

Fuel mitigation and defensible space work shall be conducted in a manner that the activities will not result in the taking of endangered, rare or threatened plant or

animal species or cause significant erosion and sedimentation of surface waters in accordance with California Environmental Quality Guidelines Section 15304.

(sic) (*Id.*) No further guidance or assistance is offered concerning how to prevent the taking of sensitive plants or animals, or even how residents will know how to identify whether such species or sensitive natural plant communities are present on one's property. Nor is any guidance offered concerning best practices for preventing erosion control and sedimentation, such as guidelines for riparian buffer zones, or how to determine if clearing a site could induce erosion or landslides. The Notification does, however, threaten to impose significant fines if compliance is not documented within 30 days.

Ms. Pearson and other residents are extremely concerned by the Notification and by the Ordinance's unreasonable demand that she and other residents undertake to destroy many acres of native plants and wildlife habitat adjoining their property lines.<sup>1</sup> The property in question includes multiple small parcels that Ms. Pearson has devoted many years to maintaining as a conservation area for native plants and wildlife. The directive to remove "all hazardous vegetation," which is not explained in the Notification, is defined by the Ordinance as "including but not limited to seasonal and recurrent grasses, weeds, stubble, brush, dry leaves, dry needles, dead, dying, or diseased trees, ... bark, mulch, non-irrigated brush, ... or any other vegetation identified by the Fire Code Official [or their designee]." (Ord. 23-04, § 3.) As confirmed by the discussion during the February 15, 2023, Board hearing, this list includes virtually all native vegetation and ground cover, excepting mature healthy trees, which would effectively result in denuding large swaths of wildlife habitat in areas that are largely undeveloped and remote from buildings. As such, the Ordinance will not only significantly impair Ms. Pearson's use and enjoyment of her property, but appears to have been enacted with no regard for the significant environmental impacts that will result from such draconian measures.<sup>2</sup>

Indeed, the Ordinance makes little effort to ensure habitat protection. While the Ordinance purports to restrict actions that would harm listed species or water quality, it delegates all compliance to individual landowners, with no training, who are subject to serious penalties if they fail to clear their land. The Ordinance does not identify exceptions or exemptions for environmentally sensitive species, or direct landowners to resources to assist compliance, instead dismissing any concerns about impacts to native habitat as a non-issue. The District appears to have made no effort to estimate the number of acres or quality of habitat that will be impacted, or to identify the sensitive species that are likely to occur in these areas. For example, no effort was made to minimize potentially significant adverse effects on California red-legged frogs, Alameda whipsnake, pallid manzanita, sensitive natural plant communities,<sup>3</sup> or any other biological resources that are likely to be impacted by the Ordinance's requirements. This complete disregard for native species is particularly alarming given that the Ordinance is likely to affect more than 500 parcels and impact over a thousand acres of lands—yet the District appears to

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<sup>1</sup> The Ordinance also imposes a significant financial burden on Ms. Pearson and other residents, who report that cost estimates in the range of \$15,000 to \$20,000 per property—just for the first year—are not uncommon.

<sup>2</sup> Because adjoining properties are each required to maintain 100-foot perimeter clearings, the Ordinance actually requires 200-foot clearings to be constructed along each property boundary.

<sup>3</sup> Sensitive natural communities are required to be inventoried and mitigated for as part of CEQA. See CDFW, Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (March 20, 2018), available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>.

have failed to conduct any analysis of potentially significant environmental impacts of its vegetation clearance policy, in clear violation of the California Environmental Quality Act (CEQA).<sup>4</sup> This neglect occurred in spite of UC Berkeley, East Bay Regional Parks District and East Bay Municipal Utilities District informing the District that even the reduced level of fuel break clearance required by the predecessor iteration of this policy, Ordinance No. 22-02, would result in unacceptable levels of environmental destruction in violation of the CEQA obligations of those entities.

To confirm that the District wholly ignored CEQA, on July 10, 2023, my office inquired with the District to determine whether it had at least claimed an exemption for the Ordinance. In response, the District’s outside counsel acknowledged that the District never adopted a notice of exemption but claimed that the holding in *Robinson v. City & County of San Francisco* (2012) 208 Cal. App. 4th 950, allowed the District to proceed with implementing the Ordinance. According to District counsel, the *Robinson* court absolves an agency from filing a *written* notice of exemption. Though the court declared a writing unnecessary, the court found that—in every instance—the lead agency in that case had issued a CEQA exemption certificate before on-the-ground activity commenced. (*Id.* at 960.) In so holding, the *Robinson* court upheld CEQA’s clear statutory requirement that public agencies at least “conduct a preliminary review to determine whether CEQA applies to a proposed project” as a “first tier” of project evaluation. (*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 704.) “[A categorical] exemption can be relied on only if a factual evaluation of the agency’s proposed activity reveals that it applies.” (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386.) “[T]he agency invoking the [categorical] exemption has the burden of demonstrating” that substantial evidence supports its factual finding that the project fell within the exemption. (*Id.*)

Indeed, every CEQA case analyzing this issue recognizes CEQA’s mandate that a preliminary environmental review is required before an exemption determination can be made. (*See Davidon Homes v. City of San Jose* (1997) 54 Cal. App. 4th 106, 117.) In *Davidon*, the Court of Appeals observed:

There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more. We conclude the agency’s exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.

(*Id.*) Similarly, here, the staff reports, draft and final Ordinance and recordings of the discussion at both Board hearings have no mention of a CEQA exemption. It appears that the District failed to conduct any threshold analysis of whether the Ordinance qualified for a CEQA exemption and certainly never made any determination that a specific CEQA exemption applied before charging ahead with its harmful vegetation clearing policy. Paradoxically, District counsel’s letter asserts

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<sup>4</sup> There is also no evidence that the District identified alternatives or analyzed the cost of compliance that the Ordinance imposes upon individual property owners, lessees, or managers.

that the Class 7 and 8 exemptions apply to the Ordinance, though no mention of a CEQA is made in the Ordinance itself, while the Pre-Citation Notice claims exemption under Class 4.

Furthermore, even if the District had procedurally complied with CEQA and declared the Ordinance exempt, the only potentially applicable CEQA exemptions are the Class 4, 7, and 8 Categorical Exemptions—but none of these apply to this specific Ordinance. (*See* CEQA Guidelines, §§ 15304(i), 15307, and 15308.)

With respect to Class 4 Categorical Exemptions, the Ordinance requires the creation of a 100-foot perimeter, which dramatically *exceeds* the level of fuel management allowed by a Class 4 Exemption, which covers:

Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100-feet of fuel clearance is required due to extra hazardous fire conditions.

(CEQA Guidelines, § 15304(i).) In contrast, the Ordinance requires vegetation to be cleared within 100-feet of the entire property boundary—not around a structure—which significantly increases the area of habitat loss by pushing individual homeowners to clear a much larger area, all around the edges of their property, and to clear away virtually all vegetation—even where no structures are present.<sup>5</sup>

The Ordinance also provides no means of ensuring that such clearings “will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters.” (Ord. 23-04, § 4(c).) The recitation of this desired outcome does not magically achieve this purpose. “Mitigation measures are not mere expressions of hope.” (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal. App. 4th 149, 1508.) The District itself must “ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Id.* (citation omitted).) The District has not taken any steps to uphold its own obligation to enforce the environmental protections. Instead, the District treats listed species, erosion, and sedimentation as special exception from liability that owners have the burden to claim, rather than circumstances that the District must in every instance affirmatively ascertain and avoid.

Moreover, unlike clearings around structures where human activity is already present, creating clearings along property lines will disrupt many areas that were previously secluded from human activity and thus more likely to be favored by wildlife.

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<sup>5</sup> To put this in perspective, an acre is 43,560 sq. ft. Under the Ordinance, a 5-acre parcel (217,800 sq. ft.) measuring 600 ft. x 363 ft. would be required to clear an area of 152,600 sq. ft., which 3.5 acres—or 70% of the entire property. In contrast, the Class 4 Exemption describes a 100-ft clearing around a building or structure, which, estimated as a circle of 100 ft. radius, amounts to 31,400 sq. ft. (or 14.4% of the property). (This difference also has a major impact on costs, as local estimates for weed-eating alone range from \$0.20 to \$1.50 per sq. ft., depending on the slope.)

The large size of the clearings may cause habitat fragmentation, eliminate food sources and cover, and create barriers to movement that impair species' reproduction. The activities required by the Ordinance are thus significantly different and potentially more impactful than the much smaller defensible space clearings included under the Class 4 Categorical Exemption.

As to the Class 7 and 8 Categorical Exemptions, these apply only to actions that maintain, restore, enhance, or protect natural resources and the environment. (*See* CEQA Guidelines, §§ 15307, 15308.) In *Save Our Big Trees v. City of Santa Cruz*, the court wholly rejected application of Class 7 and 8 Categorical Exemptions for ordinance amendments meant to allegedly enhance “heritage” protections for some trees while eliminating protections for others because it “removes rather than secures . . . protections.” (241 Cal.App.4th at 712 (quoting *Mountain Lion Found. v Fish & Game Comm'n* (1997) 16 Cal. 4th 105, 125.) That is, an ordinance that enhances protections for some natural resources while eliminating protections for others does not necessarily protect the environment. Here, too, the Ordinance compels the incontrovertible destruction of many acres of natural habitat to allegedly protect other natural resources from wildfire. The Ordinance does not afford any “assurance” that each requirement of the Ordinance will result in the “maintenance, restoration, or enhancement of a natural resource” (CEQA Guidelines, § 15307), and relies on individual homeowners, through the threat of penalties and fines, to decide which resources to save and which to destroy. Worse than the realignment of protection priorities at issue in *Save Our Big Trees*, the Ordinance directly orders District homeowners to destroy their environment.

In addition, the state Fire Safe Regulations require that “Fuel Breaks shall be constructed using the most ecologically and site appropriate treatment option, such as, but not limited to, prescribed burning, manual treatment, mechanical treatment, prescribed herbivory, and targeted ground application of herbicides.” (14 Cal. Code Regs. § 1276.03(f).) Ordinance 23-04 includes no consideration of ecologically and site appropriate treatment options and contains no provision requiring landowners to use these. Instead, the Ordinance imposes a one-size-fits-all treatment for all properties within the District, regardless of parcel size and location, or any ecological or site specific features or characteristics. Moreover, the public record contains no justification for the District’s decision to expand the size of Fuels Breaks for parcels under 10 acres from 30 feet around the perimeter of each parcels, as required by the District’s previous fire break ordinance (Ord. 22-02 (repealed)), to 100 feet under the current Ordinance.<sup>6</sup> (*See e.g.*, Agenda Packet and Regular Meeting Minutes, MOFD Bd. of Directors Meeting, Jan. 18, 2023.) There is also no evidence that the District considered ecological impacts or how many parcels or acres would be affected in making this decision.<sup>7</sup> (*Id.*)

Please accept this letter as formal notice that Ms. Pearson and her daughter, Sandy Pearson, intend to file a lawsuit in Contra Costa County Superior Court to ensure compliance with CEQA. Ms. Pearson is confident she would prevail in litigation if the District refuses to

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<sup>6</sup> At the Hearing on Ord. 23-04, the Fire Chief stated only that this provision was being revised because the variation in requirements for inhabited versus uninhabited parcels and the “sliding scale” was too complicated and confusing for the public. (*See* Audio Recording, MOFD Bd. of Directors Meeting, Jan. 18, 2023.)

<sup>7</sup> There is also no evidence that the District considered the increased financial burden this expansion would impose on the affected property owners, lessees, or managers.

immediately cease and desist further efforts to implement the Fire Break Ordinance, rescind the Fire Break Ordinance, and comply with CEQA before taking any action to approve a new Fire Break Ordinance. At a minimum, Ms. Pearson expects to the District to evaluate the potentially significant environmental impacts of clearing 100 feet of vegetation from the perimeter of every property subject to the Ordinance, which would first require that the District determine how many acres are likely to be impacted, and to identify the specific landscape features, sensitive natural plant communities and protected species that are likely to be present within these areas and in need of protection.

Thank you for your prompt attention to this issue. If you have any questions, you may contact me at the address listed herein.

Sincerely,



Jessica L. Blome  
Susann Bradford  
Greenfire Law, PC

cc:

Director Greg Hasler, [ghasler@mofd.org](mailto:ghasler@mofd.org)  
Director Steven Danziger, [stevedformofd@gmail.com](mailto:stevedformofd@gmail.com)  
Director Mike Roemer, [mroemer@mofd.org](mailto:mroemer@mofd.org)  
Director Craig Jorgens, [craig.jorgens@gmail.com](mailto:craig.jorgens@gmail.com)

## EXHIBIT B

# DAILY DISPATCH

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## We Can Do It Better

Author: Dave Winnacker, Fire Chief, Moraga-Orinda Fire District

Published: 8/07/2023

### *Shaded Fuel Breaks Will Not Deliver a Fire Adapted Future in the WUI, but Strategic Placement of Treatments (SPLATs) Can Help*

In the face of unprecedented wildfire loss and an increasingly uncertain insurance market, resources and attention have been directed to reducing the wildfire risk facing our WUI communities. Understanding that public attention and budgets are fickle, it is critical that these resources be used in the most effective manner to achieve measurable outcomes. In many WUI communities, including my own, fuel breaks, particularly shaded fuel breaks have become the primary risk reduction measure. Having been involved in the construction of several shaded fuel breaks in the WUI, I have come to believe we are inappropriately and unwittingly applying controversial techniques developed for landscape level management of natural resources in an inefficient and potentially ineffective manner.

For review, a fuel break is an area of modified fuels designed to reduce fire intensity and provide a location from which suppression efforts can be successful. Traditionally, fuel breaks included the clearance of trees and ground fuels and were constructed in a manner designed to allow for the passage of vehicles. Perhaps the greatest example of this type of fire control measure was the Ponderosa Way, an 800 mile fuel break constructed as part of the New Deal in 1933 and 1934. As an aside indicating how much has changed, this project was undertaken to prevent foothill brush fires from burning into valuable Sierra timber.

For a fuel break to work as designed, by providing a location from which suppression efforts can be successful, it must include access for firefighting resources and there must be an effective force of available firefighters to make use of the location. All of which includes a temporal component as the opportunity to hold the fire will be lost once fire is over the line.

Which raises the question of shaded fuel breaks, which are areas of modified fuels designed to reduce fire intensity, but critically, do not include access. In the absence of access, a shaded fuel break becomes a strip of modified fuels, over which fire will inevitably cross as firefighters are unable to rapidly access the critical points in time to make a difference. Early reference to shaded fuel breaks suggests widths of 400' or less are not effective without suppression efforts and "defensible fuel profile zones" of up to ¼ mile are more effective. When constructed with sufficient depth as roadside clearance, shaded fuel breaks can be very effective since access is assured and fuel modifications build upon the inherent fire control qualities of the existing road. However, many shaded fuel breaks are being built far from roadways and it is unclear how these projects will reduce the probability of wildfire loss in the communities they surround.

All fuel breaks must be located on the right topography to be effective, and ridge tops are often the most effective place for their construction. However, many communities are not located on or near ridgetops, leading to either fuel break placement far from WUI communities or sub-optimal mid-slope fuel breaks.

Fuel breaks are fixed linear features that have no value if the fire starts and or burns in a location

that does not cross the fuel break. As a Marine Corps infantry officer, I look no further than the Maginot Line's performance in 1940 for the definitive critique of a fixed fortification's value. Defensive measures of this nature simply lack the adaptability to address dynamic threats.

*Critically, there does not appear to be a body of evidence supporting the efficacy of fuel breaks, shaded or otherwise.*

In the absence of quantifiable reductions in the potential for wildfire loss, we cannot show our communities the value of the work we have completed and lack a mechanism to link our efforts to insurance access and affordability. Recent studies have shown the potential for up to 75% reduction to the average annual loss calculation used for community level insurance rate setting based on mitigations. However, these benefits can only be achieved through projects carried out in an effective manner.

This raises the question of what we should be doing instead of fuel breaks.

In his 2001 paper, Design of Regular Landscape Fuel Treatment Patterns for Modifying Fire Growth and Behavior, Dr Mark Finney outlined a concept to model and implement "treatment patterns reduce the spread rate or fireline intensity over much of the area burned, even outside the treatment units where the fire was forced to flank". These have since been implemented at test scale in the Tahoe Basin as Strategic Placement of Treatment (SPLATS).

SPLATS can be created through a variety of fuel treatments to include grazing, prescribed fire, and thinning of vegetation to create a varied fuel mosaic, mimicking the natural state in fire adapted and dependent landscapes such as the American West. This varied mosaic serves as a labyrinth through which fire must find its way, thus slowing its advance and buying time for a firefighting response to protect homes and communities. The additional time gained through a reduced rate of spread, also opens opportunities to manage a naturally occurring fire for beneficial outcomes. Further, by virtue of their distributed nature, SPLATS can be used to minimize disruptions in environmentally sensitive areas.

When combined with defensible space in the form of rigorous fuel reduction efforts within 100' of homes and thoughtful home hardening retrofits at actuarially significant levels of adoption, the combination of mitigations sets the stage for significant reductions in potential wildfire loss experience.

This is no secret weapon, the New Yorker featured them in a 2019 article, yet we keep putting in shaded fuel breaks without any validation that they will work.

As fire service professionals, we are charged with protecting our community from a number of perils, one of which is wildfire. Part of protecting a community is ensuring the limited resources available to mitigate risk, in the area of our expertise, are used in the most effective manner. Another part of protecting our communities is ensuring our work is focused on beneficial outcomes and not performative acts which may provide a false sense of security. It is time to follow the science through advocacy and implementation of risk reduction measures that will work.